THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.12456 of 1998
Date: 08-06-2007

Between:
The Depot Manager, APSRTC,
Zaheerabad Depot.

Petitioner

And
K.Pratap and another

Respondents

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.12456 of 1998

ORDER:

1. This writ petition has been preferred by the Depot Manager, Zaheerabad Depot of Andhra Pradesh State Road Transport Corporation (in short 'the APSRTC') calling in question the Award passed on 20-05-1997 in I. D. No.106 of 1995 which was instituted by the first respondent-workman.

2. The first respondent was employed as a Driver with the APSRTC and he was attached to the Zaheerabad Depot of the said corporation. On the ground that he remained unauthorizedly absent from 4th March,1992, disciplinary proceedings have been initiated against the first respondent-workman and by order dated 02-02-1994 he had been removed from the service on the ground that the charge levelled against him had been proved. Against the order imposing punishment of removal, the first respondent-workman had carried the matter by way of departmental appeal and the Divisional Manager of the APSRTC at Sangareddy passed an order to treat the first respondent-workman to have been appointed afresh as a Driver. It has been stated that the first respondent –workman had been reengaged as a Driver on 22.07.1994, but however, he raised an Industrial Dispute by instituting I.D.No.106 of 1995 questioning the order of removal passed by the Depot Manager on 02-02-1994. The Labour Court considered the matter and arrived at a conclusion that there were justified reasons for the first respondent-workman to have remained absent

from duty and therefore, it shall not be construed that he had committed any misconduct in that regard. The Labour Court therefore arrived at a finding that the punishment of removal imposed against the first respondent-workman is too harsh and disproportionate and hence it is not sustainable. It had modified the order passed by the appellate authority as an order of reinstatement instead of fresh appointment and also declared that the first respondent-workman is entitled to the benefits of continuity of service together with 50% of the backwages. It is this order which has been challenged in this present writ petition.

3. The learned standing counsel for the APSRTC has raised an objection about the maintainability of the industrial dispute invoking the provisions of Section 2-A(2) of the Industrial Disputes Act, 1947 (In short 'the I.D. Act') by the workman, on the ground that the order of removal was modified by the appellate authority to that of an order of fresh appointment and therefore there is no order of removal, discharge or retrenchment which was subsisting at the time when the Industrial Dispute has been raised by the first respondent-workman. Therefore, the learned standing counsel would contend that a non-existent industrial dispute had been invalidly entertained and hence the Award passed on 20-05-1997 by the Labour Court is vitiated. Section 2-A (2) of the I.D. Act has been incorporated to recognize the existence of an industrial dispute wherever removal, discharge or retrenchment of a workman by it's employer takes place. For redressal of such an industrial dispute, a provision has been incorporated for approaching the Labour Court concerned directly by the workman. Thus the import of the scheme which has been introduced through an amendment brought about by the State Legislature was to ensure that the industrial disputes can be redressed quickly and thus secure industrial peace and

harmony. The time consuming procedure under Section 10 of the I.D. Act has been allowed to be bypassed so that the industrial dispute can be straightaway entertained.

4. When once an order of removal, discharge or retrenchment has been modified by an order of appellate authority, the original orders gets merged with the orders passed by the appellate authority and it is the appellate authority's order which becomes effective and holds the field. If the original order of removal, discharge or retrenchment gets vanquished by exercise of power by a superior appellate authority, theoretically no such order of discharge, removal or retrenchment can exist after it's modification by the appellate authority. Therefore, the provisions contained under Section 2-A(2) of the I.D. Act cannot be invoked for creating fictionary industrial dispute requiring it's settlement or redressal. Consequently, the provision contained under Section 2-A(2) of the Act cannot be invoked at all in such circumstances.

5. In the instant case, the order of removal passed on 02-02-1994 had been altered to that of an order of fresh appointment by the appellate authority. Therefore, by the time the industrial dispute came to be instituted by the first respondent-workman, the order of removal passed against him on 02-02-1994 was not holding the field at all. In the absence of any order of removal, no industrial dispute as contemplated under Section 2-A(2) of the I. D. Act is in existence requiring it's redressal.

6. But however, the plea relating to a non-maintainability of the industrial dispute raised by the first respondent-workman had not been taken before the Labour Court. Without taking any such plea and without providing any opportunity for the first respondent-workman, to meet such a case, it is not open to the writ petitioner to raise the same in this writ petition. Unfortunately, for the

petitioner, even in the pleadings set-up in the present writ petition, there is no such plea taken about the maintainability of the industrial dispute raised by the first respondent-workman. Therefore, this contention about the maintainability of industrial dispute raised by the first respondent-workman, which came to be answered through the impugned Award dated 20-05-1997 is raised for the first time today. I do not consider it appropriate to permit the writ petitioner to raise such a contention for the first time and thus take the first respondent-workman by total surprise. In fact, a similar question has fallen for consideration before the Supreme court in **National Building Construction Corporation Vs.S.Raghunathan and others,**[1] and the same has been answered as under:

> *"Incidentally in this case, the question of "legitimate expectation" was not raised in the petition and no foundation was laid in the pleadings for such a plea being advanced before the Court. Strangely, the High Court allowed this plea at the stage of argument and allowed the petitions only on the ground of " legitimate expectation" without the least realizing that there was hardly any legitimacy in the claim of the respondents. In the absence of pleadings and the affidavit of the respondents in support thereof, the whole exercise done by the High Court cannot but be termed to be speculative"*

6. I, therefore, do not find any merit in the above writ petition and it is accordingly dismissed, but however, without costs.

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NOOTY RAMAMOHANA RAO,J

08-06-2007
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[1] (1998) 7 SCC 66